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Appointments to fill vacancies in subsidiary organs and other appointments: appointment of the judges of the United Nations Dispute Tribunal

Appointment of a full-time, a half-time and an ad litem judge of the United Nations Dispute Tribunal

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 62/228, entitled "Administration of justice at the United Nations", the General Assembly decided, inter alia, to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal.

2. In the same resolution, the General Assembly also decided that the judges of the Dispute Tribunal and the Appeals Tribunal shall be appointed by the Assembly on the recommendation of the Internal Justice Council.

3. The statutes for the Dispute Tribunal and the Appeals Tribunal were adopted by the General Assembly in its resolution 63/253. The two Tribunals became operational on 1 July 2009.

4. On 2 March 2009, by its decision 63/417, the General Assembly, on the basis of the recommendations of the Internal Justice Council (see A/63/489), appointed the following persons as full-time judges of the Dispute Tribunal: Mr. Memooda Ebrahim-Carstens (Botswana), Mr. Thomas Laker (Germany) and Mr. Vinod Boolell (Mauritius). The Assembly also appointed the following persons as half-time judges of the Dispute Tribunal: Mr. Goolam Hoosen Kader Meeran (United Kingdom of Great Britain and Northern Ireland) and Ms. Coral Shaw (New Zealand).

5. Pursuant to article 4 (4) of the statute of the Dispute Tribunal (which provides that a judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years and, as a transitional measure, that two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years), two full-time judges and one half-

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time judge were to be granted a seven-year term, and one full-time judge and one half-time judge were to be granted a three-year term, which were to be determined by the drawing of lots.

6. Accordingly, by the drawing of lots, the terms of office of one full-time judge of the Dispute Tribunal (Judge M. Ebrahim-Carstens), and one half-time judge of the Dispute Tribunal (Judge G. Meeran) were determined to be three years. Since their terms of office commenced on 1 July 2009, their three-year terms of office are due to expire on 30 June 2012.

7. In its resolution 63/253, the General Assembly decided, inter alia, that as an interim measure three ad litem judges should be appointed by the Assembly to the Dispute Tribunal. The Assembly stressed that the three ad litem judges should have all the powers conferred on the permanent judges of the Dispute Tribunal and should be appointed for a period of one year, as from 1 July 2009. The Assembly extended the mandate of the three ad litem judges thereafter until 31 December 2012, by decision 64/553 of 29 March 2010 and resolutions 65/251 of 24 December 2010 and 66/237 of 24 December 2011.

8. On 31 March 2009, by its decision 63/417 B, the General Assembly, on the recommendation of the Internal Justice Council (see A/63/489/Add.1), appointed the following persons as ad litem judges of the Dispute Tribunal: Mr. Michael Adams (Australia), Mr. Jean-François Cousin (France) and Ms. Nkemdilim Amelia Izuako (Nigeria). The terms of the three ad litem judges, serving in New York, Geneva and Nairobi, respectively, began on 1 July 2009. On 18 June 2010, by its decision 64/417 B, the General Assembly, on the recommendation of the Internal Justice Council (see A/64/791), appointed Ms. Marilyn J. Kaman (United States of America) as ad litem judge of the Dispute Tribunal in New York upon the departure of Judge Michael Adams. Her term of office began on 1 July 2010.

9. The current vacancy for the ad litem judge arose because Judge Marilyn J. Kaman had declined, for personal reasons, to accept the extension of her appointment for an additional six-month period, approved by the General Assembly in resolution 65/251 (see A/65/853).

10. It is therefore necessary for the General Assembly, during its sixty-sixth session, to appoint a full-time judge, a half-time judge and an ad litem judge to the Dispute Tribunal. In accordance with article 4 (4) of the statute, the term of office of the full-time judge and the half-time judge will be seven years. In accordance with paragraph 42 of resolution 66/237, the mandate of the ad litem judge will be for one year.

II. Internal Justice Council

11. In its report (A/66/664), the Council recommended six candidates for the three vacancies on the Appeals Tribunal (Judges Chapman, Chinhengo, Courtial, Greceanu, Joensen and Lussick). For the Dispute Tribunal, it recommended two candidates for the full-time vacancy (Judges Chapman and Ebrahim-Carstens), two candidates for the half-time vacancy (Judges Cousin and Meeran) and three candidates for the ad litem vacancy (Judges Chapman, Joensen and Lussick).

12. On 18 February 2012, Judge Joensen advised the Council that he wished to withdraw his candidature for the ad litem vacancy on the Dispute Tribunal.

13. The elections for the vacancies on the Appeals Tribunal were held on 23 February 2012, at which time the General Assembly elected Judges Chapman, Courtial and Lussick to the Appeals Tribunal. Based on the outcome of the election to the Appeals Tribunal and the withdrawal of Judge Joensen's candidature for the ad litem vacancy on the Dispute Tribunal, Judge Ebrahim-Carstens became the only remaining candidate recommended by the Council for the full-time vacancy, and there were no longer any remaining candidates recommended by the Council for the ad litem vacancy.

14. In paragraph 12 of its report (A/66/664), the Council advised that if it became necessary for it to furnish additional names to the General Assembly because all the candidates for the ad litem position had been appointed to permanent positions, the Council would do so as expeditiously as possible. As a result, the Council drafted an addendum to its report (A/66/664/Add.1), in which it recommended additional candidates for the full-time judicial vacancy and the ad litem vacancy in New York.

15. In its report to the General Assembly (A/66/664 and Add.1), the Council has recommended to the Assembly for its consideration, two candidates for the full-time vacancy, two candidates for the half-time vacancy and two candidates for the ad litem vacancy. In that report, the Council has provided the names, by position, location and Tribunal, of candidates it considers suitable for election to the Dispute Tribunal.

16. The Council reviewed applications of the recommended candidates in July and August 2011 and interviewed shortlisted candidates in September 2011. Before the interviews were held, referees were contacted and written references obtained from two referees for each candidate. Candidates were required to complete a two-hour examination designed to test their writing and reasoning abilities, which was followed by an interview lasting 30-45 minutes. With the candidates' permission, the Council subsequently approached the relevant domestic bar associations and the International Bar Association to request confirmation of the integrity of the candidates.

17. The candidates recommended by the Council for appointment as full-time judge are:

(a) Memooda Ebrahim-Carstens (Botswana);

(b) Danielle Grenier (Canada).

18. The candidates recommended by the Council for appointment as half-time judge are:

(a) Jean-François Cousin (France);

(b) Goolam Hoosen Kader Meeran (United Kingdom of Great Britain and Northern Ireland).

19. The candidates recommended by the Council for appointment as ad litem judge are:

(a) Alessandra Greceanu (Romania);

(b) Danielle Grenier (Canada).

20. The candidates' curricula vitae are provided in the annexes to the above report of the Internal Justice Council (A/66/664 and Add.1).

III. Procedure in the General Assembly

21. The appointment of the full-time and half-time judges of the United Nations Dispute Tribunal will be made in accordance with:

(a) The statute of the Dispute Tribunal;

(b) The rules of procedure of the General Assembly;

(c) The recommendations of the Internal Justice Council as set out in its report to the General Assembly (A/66/664 and Add.1).

22. The appointment of a judge to the United Nations Dispute Tribunal is addressed in article 4 of its statute, which states:

"1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.

"2. The judges shall be appointed by the General Assembly on the recommendation of the Internal Justice Council in accordance with Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.

"3. To be eligible for appointment as a judge, a person shall:

"(a) Be of high moral character; and

"(b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.

"4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years. A current or former judge of the United Nations Appeals Tribunal shall not be eligible to serve in the Dispute Tribunal."

23. The appointment of ad litem judges to the United Nations Dispute Tribunal is not addressed in its statute. Accordingly, the appointment of an ad litem judge will be made in accordance with:

(a) General Assembly resolution 66/237;

(b) The rules of procedure of the General Assembly;

(c) The recommendations of the Internal Justice Council as set out in its report to the General Assembly (A/66/664 and Add.1).

24. It is proposed that the General Assembly proceed to appoint the full-time, half-time and ad litem judges of the Dispute Tribunal through an election, bearing in mind paragraph 58 of Assembly resolution 63/253, in which the Assembly invited Member States, when electing judges to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, to take due consideration of geographical distribution and gender balance.

25. Only those candidates recommended by the Internal Justice Council whose names appear in this memorandum are eligible for election. The electors in the

General Assembly will indicate the candidates for whom they wish to vote by placing a cross against each name on the ballot papers. Each elector may vote for not more than one candidate for full-time appointment, one candidate for half-time appointment and one candidate for ad litem appointment.

26. Those candidates who obtain the highest number of votes, and a majority of votes in the General Assembly of the members present and voting, will be considered as elected and thereby appointed by the Assembly to the Dispute Tribunal.

27. Balloting shall continue in accordance with the rules of procedure until as many candidates as are required for the full-time, half-time and ad litem seats on the Dispute Tribunal to be filled have obtained, in one or more ballots, a majority of votes of the members present and voting.

28. It is proposed that the election for the full-time seat on the Dispute Tribunal take place first. Once the full-time judge has been elected, the election for the half-time seat on the Tribunal will proceed. Once the half-time judge has been elected, the election for the ad litem seat on the Tribunal will proceed.